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Date: (Filing No. H- )

**JUDICIARY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
126TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 368, L.D. 549, Bill, “An Act To Allow a Person Who Is 21 Years of Age or Older To Expunge Certain Criminal Convictions”

Amend the bill by striking out the title and substituting the following:

**'An Act To Provide for Special Restrictions on Dissemination and Use of Criminal History Record Information for Class E Crimes Committed by an Adult under 21 Years of Age'**

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**'Sec. 1. 15 MRSA c. 310** is enacted to read:

**CHAPTER 310**

**POST-JUDGMENT MOTION BY PERSON SEEKING TO SATISFY THE PREREQUISITES FOR OBTAINING SPECIAL RESTRICTIONS ON DISSEMINATION AND USE OF CRIMINAL HISTORY RECORD INFORMATION FOR CERTAIN CRIMINAL CONVICTIONS**

**§2251. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Administration of criminal justice.** "Administration of criminal justice" has the same meaning as in Title 16, section 611, subsection 1.

**2. Another jurisdiction.** "Another jurisdiction" has the same meaning as in Title 17-A, section 2, subsection 3-B.

**3. Criminal history record information.** "Criminal history record information" has the same meaning as in Title 16, section 611, subsection 3.

**4. Criminal justice agency.** "Criminal justice agency" has the same meaning as in Title 16, section 611, subsection 4.

**COMMITTEE AMENDMENT**

1            **5. Dissemination.** "Dissemination" has the same meaning as in Title 16, section  
2            611, subsection 6.

3            **6. Eligible criminal conviction.** "Eligible criminal conviction" means a conviction  
4            for a Class E crime under Title 17-A, chapter 15.

5            **§2252. Statutory prerequisites for obtaining special restrictions on dissemination**  
6            **and use of criminal history record information for a criminal conviction**

7            The special restrictions on dissemination and use of criminal history record  
8            information for a criminal conviction specified in section 2255 apply only if:

9            **1. Eligible criminal conviction.** The criminal conviction is an eligible criminal  
10           conviction;

11           **2. Age of person at time of commission.** At the time of the commission of the  
12           crime underlying the eligible criminal conviction, the person had in fact attained 18 years  
13           of age but not 21 years of age;

14           **3. Time since sentence fully satisfied.** At least 4 years have passed since the person  
15           has fully satisfied each of the sentencing alternatives imposed for the eligible criminal  
16           conviction;

17           **4. Other state convictions.** The eligible criminal conviction is the only criminal  
18           conviction of the person in this State and the person has not had a criminal charge  
19           dismissed as a result of a deferred disposition pursuant to Title 17-A, chapter 54-F and  
20           has not been adjudicated as having committed a juvenile crime for which the hearing was  
21           open to the general public under section 3307;

22           **5. Convictions in another jurisdiction.** The person has no criminal convictions  
23           from another jurisdiction; and

24           **6. Pending criminal charges.** The person has no presently pending criminal  
25           charges in this State or in another jurisdiction.

26           **§2253. Motion; persons who may file**

27           A person may file a written motion in the underlying criminal proceeding seeking a  
28           court determination that the person satisfies the statutory prerequisites specified in section  
29           2252 for obtaining the special restrictions on dissemination and use of criminal history  
30           record information relating to a criminal conviction as specified in section 2255. The  
31           written motion must briefly address each of the statutory prerequisites.

32           **§2254. Motion and hearing; process**

33           **1. Filing motion.** A motion filed pursuant to section 2253 must be filed in the  
34           underlying criminal proceeding. After a motion has been filed, the clerk shall set the  
35           motion for hearing.

36           **2. Counsel.** The person filing a motion pursuant to section 2253 has the right to  
37           employ counsel but is not entitled to assignment of counsel at state expense.

38           **3. Representation of the State.** The prosecutorial office that represented the State  
39           in the underlying criminal proceeding shall represent the State for purposes of this

1 chapter. On a case-by-case basis, a different prosecutorial office may represent the State  
2 on agreement between the 2 prosecutorial offices.

3 **4. Evidence.** The Maine Rules of Evidence do not apply to a hearing on a motion  
4 under this section, and evidence presented at a hearing by the participants may include  
5 testimony, affidavits and other reliable hearsay evidence as permitted by the court.

6 **5. Hearing; certification of results.** The judge or justice shall hold a hearing on the  
7 motion under this section. At the conclusion of the hearing, if the court determines that  
8 the person who filed the motion has established by a preponderance of the evidence each  
9 of the statutory prerequisites specified in section 2252, the court shall find the person  
10 entitled to the special restrictions on dissemination and use of the criminal history record  
11 information relating to the criminal conviction as specified in section 2255 and shall issue  
12 a written order certifying this determination. If, at the conclusion of the hearing, the court  
13 determines that the person has not established one or more of the statutory prerequisites  
14 specified in section 2252, the court shall deny the motion and issue a written order  
15 certifying this determination. The order must contain written findings of fact supporting  
16 the court's determination. A copy of the court's written order must be provided to the  
17 person and the prosecutorial office that represented the State pursuant to subsection 3.

18 **6. Notice to State Bureau of Identification; responsibility to inform.** If the court  
19 determines pursuant to subsection 5 that a person has established by a preponderance of  
20 the evidence each of the statutory prerequisites specified in section 2252, a copy of the  
21 court's written order certifying its determination must be provided to the Department of  
22 Public Safety, Bureau of State Police, State Bureau of Identification. The State Bureau of  
23 Identification upon receipt of the order shall promptly alter its records relating to the  
24 person's eligible criminal conviction to reflect that future dissemination of this criminal  
25 history record information must be pursuant to section 2255 rather than pursuant to Title  
26 16, section 615 and shall advise all prior recipients who have received that information  
27 within the year prior to the court's written order under subsection 5 of the change. The  
28 State Bureau of Identification shall also notify the person of compliance with that  
29 requirement and the prior recipients notified.

30 **7. Subsequent new criminal conviction; automatic loss of eligibility; person's**  
31 **duty to notify.** Notwithstanding that a person has been determined by a court pursuant to  
32 subsection 5 to be entitled to the special restrictions on dissemination and use of criminal  
33 history record information relating to a criminal conviction specified in section 2255, if at  
34 any time subsequent to the court's determination the person is convicted of a new crime in  
35 this State or in another jurisdiction, the new conviction extinguishes that entitlement. In  
36 the event of a new criminal conviction, the person shall promptly file a written notice in  
37 the underlying criminal proceeding of the person's disqualification from entitlement  
38 identifying the new conviction, including the jurisdiction, court and docket number of the  
39 criminal proceeding. If the person fails to file the required written notice and the court  
40 learns of the existence of the new criminal conviction, the court shall notify the person of  
41 its apparent existence and offer the person an opportunity at a hearing to contest the fact  
42 of a new conviction. If a hearing is requested by the person, the court shall, after giving  
43 notice to the person and the appropriate prosecutorial office, hold a hearing. At the  
44 hearing, the person has the burden of proving by clear and convincing evidence that the  
45 person does not have the new conviction. At the conclusion of the hearing, if the court  
46 determines that the person has not satisfied the burden of proof, it shall find that the

1 person has been convicted of the new crime and as a consequence is no longer entitled to  
2 the special restrictions on dissemination and use of the criminal history record  
3 information relating to the criminal conviction as specified in section 2255 and shall issue  
4 a written order certifying this determination. If, at the conclusion of the hearing, the court  
5 determines that the person has satisfied the burden of proof, it shall find that the person  
6 has not been convicted of the new crime and issue a written order certifying this  
7 determination. The order must contain written findings of fact supporting the court's  
8 determination. A copy of the court's written order must be provided to the person and the  
9 prosecutorial office that represented the State.

10 **8. Notice to State Bureau of Identification; responsibility to inform.** If the court  
11 determines under subsection 7 that a person has been convicted of a new crime and as a  
12 consequence is no longer eligible for the special restrictions on dissemination and use of  
13 the criminal history record information relating to the criminal conviction as specified in  
14 section 2255, a copy of the court's written order certifying its determination must be  
15 provided to the Department of Public Safety, Bureau of State Police, State Bureau of  
16 Identification. The State Bureau of Identification upon receipt of the order shall alter its  
17 records relating to the person's criminal conviction to reflect that dissemination of this  
18 criminal history record information is pursuant to Title 16, section 615 rather than  
19 pursuant to section 2255 and shall advise all prior recipients who have received that  
20 information within the year prior to the court's written order under subsection 5 of the  
21 change. It shall also notify the person of compliance with that requirement and the prior  
22 recipients notified.

23 **§2255. Special restrictions on dissemination and use of criminal history record**  
24 **information relating to criminal conviction**

25 Notwithstanding Title 16, section 615, the criminal history record information  
26 relating to a criminal conviction for which the court has determined the person is entitled  
27 to special restrictions on dissemination and use is confidential and may not be  
28 disseminated by a criminal justice agency, whether directly or through any intermediary,  
29 except:

30 **1. Subject of conviction.** To the person who is the subject of the criminal  
31 conviction or that person's designee; and

32 **2. Criminal justice agency.** To a criminal justice agency for the purpose of the  
33 administration of criminal justice and criminal justice agency employment.

34 For the purposes of this section, dissemination to a criminal justice agency for the  
35 purpose of the administration of criminal justice includes dissemination and use of the  
36 criminal history record information relating to the qualifying criminal conviction by an  
37 attorney for the State or for another jurisdiction as part of a prosecution of the person for  
38 a new crime, including use in a charging instrument or other public court document and  
39 in open court.

40 **§2256. Limited disclosure of eligible criminal conviction**

41 A person who has a criminal conviction eligible for the special restrictions on  
42 dissemination and use of criminal history record information under section 2255 may

1 respond to inquiries from other than criminal justice agencies by not disclosing its  
2 existence, without being subject to any sanctions.

3 **§2257. Unlawful dissemination**

4 A person who intentionally disseminates criminal history record information relating  
5 to a criminal conviction in violation of section 2255 knowing it to be in violation is guilty  
6 of unlawful dissemination as provided in Title 16, section 619.

7 **§2258. Review of determination of eligibility; review of determination of subsequent**  
8 **criminal conviction**

9 A final judgment entered under section 2254, subsection 5 or 7 may be reviewed by  
10 the Supreme Judicial Court.

11 **1. Appeal by the person.** A person aggrieved by the final judgment under section  
12 2254, subsection 5 or 7 may not appeal as of right. The time for taking the appeal and the  
13 manner and any conditions for the taking of the appeal are as the Supreme Judicial Court  
14 provides by rule.

15 **2. Appeal by the State.** If the State is aggrieved by the final judgment under section  
16 2254, subsection 5 or 7, it may appeal as of right, and a certificate of approval by the  
17 Attorney General is not required. The time for taking the appeal and the manner and any  
18 conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

19 **§2259. Repeal**

20 This chapter is repealed October 1, 2017.

21 **Sec. 2. 16 MRSA §619, sub-§1,** as enacted by PL 1979, c. 433, §2, is amended to  
22 read:

23 **1. Offense.** A person is guilty of unlawful dissemination if ~~he~~ the person knowingly  
24 disseminates criminal history record information in violation of any of the provisions of  
25 this subchapter or if the person intentionally disseminates criminal history record  
26 information relating to a criminal conviction in violation of section 2255 knowing it to be  
27 in violation.

28 **Sec. 3. Appropriations and allocations.** The following appropriations and  
29 allocations are made.

30 **JUDICIAL DEPARTMENT**

31 **Courts - Supreme, Superior and District 0063**

32 Initiative: Provides funds for the temporary services of an Active Retired Judge and Clerk  
33 position and related costs, including one-time funds for computer programming costs.

|    |                     |                |                |
|----|---------------------|----------------|----------------|
| 34 | <b>GENERAL FUND</b> | <b>2013-14</b> | <b>2014-15</b> |
| 35 | Personal Services   | \$3,463        | \$3,567        |
| 36 | All Other           | \$11,203       | \$203          |
| 37 |                     | _____          | _____          |

|    |  |                  |                |
|----|--|------------------|----------------|
| 1  | GENERAL FUND TOTAL   | \$14,666         | \$3,770        |
| 2  | <b>JUDICIAL DEPARTMENT</b>                                   |                  |                |
| 3  | <b>DEPARTMENT TOTALS</b>                                     | <b>2013-14</b>   | <b>2014-15</b> |
| 4  |  |                  |                |
| 5  | GENERAL FUND   | \$14,666         | \$3,770        |
| 6  |  |                  |                |
| 7  | <b>DEPARTMENT TOTAL - ALL FUNDS</b>                          | <b>\$14,666</b>  | <b>\$3,770</b> |
| 8  | <b>PUBLIC SAFETY, DEPARTMENT OF</b>                          |                  |                |
| 9  | <b>State Police 0291</b>                                     |                  |                |
| 10 | Initiative: Provides funding for computer programming costs. |                  |                |
| 11 | <b>GENERAL FUND</b>  | <b>2013-14</b>   | <b>2014-15</b> |
| 12 | All Other  | \$76,500         | \$2,550        |
| 13 |  |                  |                |
| 14 | GENERAL FUND TOTAL   | \$76,500         | \$2,550        |
| 15 | <b>HIGHWAY FUND</b>  | <b>2013-14</b>   | <b>2014-15</b> |
| 16 | All Other  | \$73,500         | \$2,450        |
| 17 |  |                  |                |
| 18 | HIGHWAY FUND TOTAL   | \$73,500         | \$2,450        |
| 19 | <b>PUBLIC SAFETY, DEPARTMENT OF</b>                          |                  |                |
| 20 | <b>DEPARTMENT TOTALS</b>                                     | <b>2013-14</b>   | <b>2014-15</b> |
| 21 |  |                  |                |
| 22 | GENERAL FUND   | \$76,500         | \$2,550        |
| 23 | HIGHWAY FUND   | \$73,500         | \$2,450        |
| 24 |  |                  |                |
| 25 | <b>DEPARTMENT TOTAL - ALL FUNDS</b>                          | <b>\$150,000</b> | <b>\$5,000</b> |
| 26 | <b>SECTION TOTALS</b>  | <b>2013-14</b>   | <b>2014-15</b> |
| 27 |  |                  |                |
| 28 | GENERAL FUND   | \$91,166         | \$6,320        |
| 29 | HIGHWAY FUND   | \$73,500         | \$2,450        |
| 30 |  |                  |                |
| 31 | <b>SECTION TOTAL - ALL FUNDS</b>                             | <b>\$164,666</b> | <b>\$8,770</b> |
| 32 |  |                  |                |

**SUMMARY**

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This amendment is the majority report of the Joint Standing Committee on Judiciary and it replaces the bill. It establishes a process to apply special restrictions on the dissemination and use of criminal history record information about an eligible criminal conviction. An eligible criminal conviction must meet 6 requirements in order for the person to be eligible for special treatment of the conviction information. The person must have been at least 18 years of age but under 21 years of age when the person committed the crime, and the crime is limited to Class E theft. In addition, at least 4 years must have passed since the person has fully satisfied each of the sentencing alternatives imposed for the conviction of the Class E theft. The Class E theft conviction must be the only criminal conviction of the person in this State, the person may not have been adjudicated as having committed a juvenile crime for which the hearing was open to the general public under the Maine Revised Statutes, Title 15, section 3307 and the person may not have had a criminal charge dismissed as a result of a deferred disposition pursuant to Title 17-A, chapter 54-F. The person may have no criminal convictions from another jurisdiction, and no criminal charges may be pending in this State or in another jurisdiction.

To be eligible for the special restrictions, a person must file a motion with the court in the underlying criminal proceeding. The person is entitled to employ counsel, but the State is not required to cover the expense. The prosecutorial office that represented the State in the underlying criminal proceeding must represent the State, except in certain circumstances.

The judge or justice must hold a hearing on the motion. At the conclusion of the hearing, if the court determines that the person who filed the motion has established by a preponderance of the evidence each of the 6 statutory prerequisites, the court must find the person entitled to the special restrictions on dissemination and use of the criminal history record information relating to the criminal conviction and issue a written order certifying this determination. If, at the conclusion of the hearing, the court determines that the person has not established one or more of the statutory prerequisites, the court must deny the motion and issue a written order certifying this determination.

The Department of Public Safety, Bureau of State Police, State Bureau of Identification upon receipt of the order must promptly alter its records relating to the person's qualifying criminal conviction to reflect that future dissemination of this criminal history record information must be pursuant to the new procedure rather than pursuant to Title 16, section 615 and shall notify all prior recipients who have received that information within the year prior to the court order of the change. It must also notify the person of compliance with that requirement and the prior recipients notified. This is consistent with the requirements for notification of changes or amendments to criminal history record information under Title 16, section 620.

If the person is convicted of a subsequent crime, the person is required to file a written notice in the underlying criminal proceeding. If the person fails to file the required written notice and the court learns of the existence of the new criminal conviction, the court must notify the person of its apparent existence and offer the person an opportunity at a hearing to contest the fact of a new conviction. At the hearing the person has the burden of proving by clear and convincing evidence that the person does

1 not have the new conviction. At the conclusion of the hearing, if the court determines  
2 that the person has not satisfied the burden of proof, it must find that the person has been  
3 convicted of the new crime and as a consequence is no longer eligible for the special  
4 restrictions on dissemination and use of the criminal history record information relating to  
5 the criminal conviction and issue a written order certifying this determination. The order  
6 must contain written findings of fact supporting the court's determination.

7 If the court determines that the person has been convicted of a new crime and as a  
8 consequence is no longer entitled to the special restrictions on dissemination and use of  
9 the criminal history record information relating to the criminal conviction, a copy of the  
10 court's written order certifying its determination must be provided to the State Bureau of  
11 Identification. The State Bureau of Identification upon receipt of the order must alter its  
12 records relating to the person's criminal conviction to reflect that dissemination of this  
13 criminal history record information is pursuant to the criminal history record information  
14 laws under Title 16, chapter 3, subchapter 8 rather than pursuant to the new process and  
15 notify the person, the appropriate criminal justice agencies and all prior recipients of  
16 record of the change.

17 Notwithstanding Title 16, chapter 3, subchapter 8, the criminal history record  
18 information relating to the eligible criminal conviction is confidential and may not be  
19 disseminated by a criminal justice agency, whether directly or through any intermediary,  
20 except to the person and to a criminal justice agency for the purpose of the administration  
21 of criminal justice and criminal justice agency employment. Dissemination to a criminal  
22 justice agency for the purpose of the administration of criminal justice includes  
23 dissemination and use of the criminal history record information relating to the eligible  
24 criminal conviction by an attorney for the State or for another jurisdiction as part of a  
25 prosecution of the person for a new crime, including use in a charging instrument or other  
26 public court document and in open court.

27 A person who has an eligible criminal conviction for which the court has determined  
28 the person is entitled to special restrictions on dissemination and use may respond to  
29 inquiries from other than criminal justice agencies by not disclosing its existence, without  
30 being subject to any sanctions.

31 Unlawfully releasing the restricted information is a violation of the release of  
32 confidential information under the criminal history record information laws under Title  
33 16, chapter 3, subchapter 8.

34 A final judgment on the motion or determination on a subsequent criminal conviction  
35 may be reviewed by the Supreme Judicial Court.

36 The provisions establishing the process to apply special restrictions on the  
37 dissemination and use of criminal history record information about an eligible criminal  
38 conviction are repealed October 1, 2017.

39 This amendment also adds an appropriations and allocations section.

40 **FISCAL NOTE REQUIRED**

41 **(See attached)**